



SAMSON TUG AND BARGE CO., INC.
V.
UNITED STATES OF AMERICA
(Case #A03-006 CV)

ANALYSIS RELATING TO
CERTAIN ELEMENTS OF JULY 20, 2007
REPORT PREPARED BY DEFENDANT'S EXPERT
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November 9, 2007

Date 11/16/07 Exhibit # 130
Case 4050-17
Deponent Samson
Reporter KATHLEEN M. MCKEE
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Exhibit 11-54

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ANALYSIS OF AVAILABLE DATA REGARDING CARGO SHIPMENTS.....	1
	A. ANALYSIS OF DATA RELATING TO AMOUNT AND NATURE OF CARGO CARRIED BY AIR.....	3
	B. ANALYSIS OF DATA RELATING TO AIR CARGO CAPACITY AND TOTAL AIR CARGO CARRIED.....	3
III.	SUMMARY AND CONCLUSIONS.....	8
IV.	EXHIBITS	9
V.	APPENDICES	
	A. ASSUMPTIONS, LIMITING CONDITIONS, AND CERTIFICATIONS:	
	B. LIST OF ITEMS CONSIDERED	
	C. CURRICULUM VITAE, LIST OF TESTIMONY AND PUBLICATIONS – GEORGE L JOHNSON, CPA, CFA	

I. Introduction

I have been engaged by Counsel for Samson Tug and Barge Co., Inc. ("Samson" or "the Company") to arrive at an independent opinion regarding damages to Samson as a result of the Government's alleged breach of Contract N62387-95-D-8503 ("the Contract"), assuming that the Government is found to have breached its contractual obligations.

I developed certain opinions regarding these issues and presented those opinions, together with their basis, in a report dated April 27, 2007. Correction of a minor error relating to some late billed revenue from the subject contract resulted in the issuance of a corrected report dated May 21, 2007. My final conclusion was that based upon the information available and the analysis I had done to date, that the most reasonable estimate of the Samson's loss due to the breach was approximately \$5.8 million.

Ernest Nadel PhD, the Government's expert, issued a report on July 20, 2007 detailing his opinions with respect to damages in this matter, and criticizing my report. This report has been prepared in order to address certain statements made by Dr. Nadel in his report.

Dr Nadel objects to my conclusions as to Samson's damages in this matter, because he believes that those conclusions imply that an impossibly large volume of cargo was diverted to air movement. With respect to this objection, analysis of the available information conducted in response to Dr Nadel's objections indicates that on the contrary:

- a) Sufficient air cargo capacity was in fact available to have carried considerably more cargo than Dr. Nadel suggests is necessary to support my estimate of Samson's loss.
- b) A large volume of cargo was in fact shipped by air.
- c) Much of that cargo was of a type apparently suitable for transportation by barge.

II. Analysis of available data regarding cargo shipments

On page 40 of his report, Dr. Nadel makes the following assertion:

"Mr. Johnson's alleged damages imply 20,695.6 MTONS of cargo [was] diverted to the air mode."

To the extent that this statement suggests a direct arithmetical relationship between revenue lost by Samson and measurement tons of cargo carried by air, it oversimplifies. Because partially loaded containers would have been carried by Samson at the "minimum container" rate rather than the "per measurement ton" rate, this statement may overstate the "implied" diverted measurement tonnage in fact required to cause a loss equal to the damages estimated in my report. Dr. Nadel's main objective, however, is to lead the reader to the view that this is an unreasonably large amount of cargo that could not possibly have been diverted to shipment by air.

We have examined three different documents, each containing different (partial) information regarding the subjects of the available air cargo capacity, and what and how much cargo was actually shipped by air. Copies of the documents are included with this report, numbered as Exhibits 1, 2, and 3.

- Exhibit 1- Titled "FOIA request for Adak, Ala. Movement" (dated March 21, 2001). This document was Exhibit 17D to Samson's original claim and Exhibit 3 to Brian Peterson's deposition.
- Exhibit 2- Untitled document, apparently an Excel Spreadsheet, undated. This document was Exhibit 17A to Samson's original claim, and was provided to Samson in response to a FOIA request.
- Exhibit 3- Document Titled "Sheet 1" also apparently an Excel Spreadsheet, undated (Bates Stamped US00000001-US00000024.) This document was produced by the Government during this litigation, and was Exhibit 2 to Brian Peterson's deposition.

The information in these documents concerning the number of flights and the amount of air cargo carried on those flights is fragmentary, incomplete, sometimes contradictory, and provides insufficient basis for a direct computation of revenue lost due to the diversion.

There are a number of problems with the available data concerning Adak Air Cargo shipments, including:

- Exhibit 1, which has the most information as to weight and nature of cargo, covers barely half the contract period.
- Exhibit 2 which purports to cover most of the contract period, has internal discrepancies, e.g. it shows more flights in than out.
- Exhibit 3 which purports to cover the same time period as Exhibit 2 shows a different number of flights.
- Exhibit 3 has numerous blanks and zeroes in the space to show the weight of the cargo carried, and does not show the nature of the cargo.
- Exhibits 2 and 3, to the extent that the time period overlaps with Exhibit 1, are irreconcilable in a number of instances as to what the flights were.
- Of the charts provided, none purports to show all the flights and the weights, the volume and nature of the cargo carried.¹
- A number of witnesses testified that manifests were created when cargo was shipped by air, showing the weight, volume and nature of the cargo and that copies of the manifests were retained in the files. We have not been provided with any.

¹ On November 2, 2007, Samson's Counsel was informed by Government Counsel that additional documents showing flight data during the contract period had just been discovered. These documents were sent to Samson's counsel on November 8, 2007. After review, I find the documents to be sparse and difficult to interpret. They appear to reflect 12 additional flights during the contract period that do not appear on Exhibits 1, 2, or 3.

Nonetheless, certain conclusions can be drawn from this available information, which are sufficient to dispose of Dr. Nadel's claim that the amount of diverted air cargo allegedly "implied" by my concluded damages is unreasonably large.

A. Analysis of Data Relating to Amount and Nature of Cargo Carried by Air

1. Analysis of Exhibit 1- Air Cargo disclosed in "FOIA Request for Adak, Alaska Movement" (Exhibit 17D to original claim.)-

This is the only one of the three data sources available that addresses the question of what types of cargo were shipped by air, how much it weighed, and how much volume it occupied. The information spans dates from 10/2/96 to 9/17/97. (Somewhat less than the last year of the two year contract period, which ran from 10/1/95 to 9/30/97.)

We have no basis upon which to determine what items are missing from this list, but given the air cargo volumes shown on Exhibit 3 (discussed below) Exhibit 1 appears to encompass only a fraction of the cargo actually transported by air.

The cargo listed on Exhibit 1 totals 1,396,990 pounds and 128,915 cubic feet. After eliminating cargo shipped to Adak from points outside the Continental US (CONUS) and cargo shipped from Adak to points outside CONUS, the remaining cargo shown totals 1,264,379 pounds and 114,662 cubic feet.² Implicit in this is an average density of 441.08 lb per Measurement Ton. (1,264,379 lb divided by 114,662 cubic feet X 40 cubic feet per Measurement Ton).³

B. Analysis of Data Relating To Air Cargo Capacity and Total Air Cargo Carried.

Two of the three documents contain some information concerning the number of flights in and out of Adak during the contract period. With this information, one can draw some preliminary conclusions concerning the minimum air cargo capacity that was available during the contract period. In doing so, I employed the same methodology Dr. Nadel did concerning the cargo capacity of the various types of aircraft, even though depending on how the cargo was configured, I believe that the capacities could be higher than he assumed. In addition, Exhibit 3 gives us some (incomplete) information concerning the amount of cargo transported by air.

² Evidence in the record indicates that Elmendorf Air Force Base outside Anchorage was used to stage cargo shipped by air from CONUS to points in Alaska and vice versa. Consequently, the computations above, intended to estimate the density of CONUS cargo, include cargo shipped to Elmendorf in the computation.

³ I use this average density number to convert lb. to MT of cargo, without necessarily accepting the proposition that the average density for cargo shipped in containers on a barge is as high as the average density of cargo shipped by air.

1. Analysis of Exhibit 2 – (Untitled FOIA response from Government, Submitted as Exhibit 17A to Samson's Original Claim, Exhibit 3 to Peterson's deposition)

Prior to the commencement of this litigation, Samson's counsel filed a FOIA request seeking information regarding cargo shipped in and out of Adak by air and flights in and out of Adak during the contract period. Exhibit 2 is one of the FOIA responses received.

Key information from Exhibit 2 is briefly summarized below:

Date of Earliest Flight Shown 10/2/1995
Date of Latest Flight Shown 9/19/1997

Flights by Aircraft Type

	Flights In	Freight Capacity (MT)	Flights out	Freight Capacity (MT)
B737	191	9,741	184	9,384
C009A	3	unkn	3	unkn
C021A	4	unkn	4	unkn
C130H	109	6,622	84	5,103
C141B	23	2,515	19	2,078
DC006	1	unkn	1	unkn
HC130N	1	unkn	0	unkn
	332	> 18,878	295	> 16,565

In arriving at the above estimates, we have assumed that the B737 aircraft used in these flights were configured to carry four standard pallets of cargo. (Depending on the number of seats installed, the aircraft could carry up to seven pallets.) We have ignored the capacity of the aircraft holds in these computations. (This may be conservative, as the passenger counts were probably relatively low).

There are a number of problems with this data set.

- 1) The data include what appear to be duplicate entries for certain flights. Our computation remove these from consideration.
- 2) The data include 37 more flights into Adak than flights out of Adak. Presumably this indicates missing flight records.
- 3) We do not have information concerning the capacity of the C009A, CO21A, DC006, and HC130N aircraft, and have therefore not included these flights in computations of total air freight capacity.
- 4) The interval covered by the data does not include the entire period of the contract.

- 5) Counsel has advised us that no Government witness was willing to make an affirmative representation that this disclosure or the records on which it was based, are complete or exhaustive.

Nonetheless, based on the above figures, which appear to understate actual capacity available, we conclude that the available records indicate a minimum air cargo capacity during the contract period of more than 35,000 MT, about 1.7 times Dr. Nadel's estimated 20,695 MT of "implied air cargo diversion."

2. Analysis of Exhibit 3- (Untitled document supplied by Donald Peterson- US00001-US00024, Exhibit 2 to Peterson's deposition)

In response to discovery requests from Samson, Donald Peterson, a Government-designated 30(b)(6) witness, produced the document shown herein as Exhibit 3. There is considerable overlap between the flights shown on this exhibit and those shown on Exhibit 2, however Exhibit 3 shows fewer flights for the same period than Exhibit 2. Exhibit 3 displays the data in a "total mission" format, so that both the flight into Adak and the flight out of Adak are captured in each "First Mission ID", thus there are no "unmatched" flights. Exhibit 3 is also the only flight list that contains any information regarding the passenger counts and amount of cargo carried on the flights shown. Information on these items appears somewhat fragmentary, suggesting that they were not consistently recorded.

Key information from Exhibit 3 is briefly summarized on the next two pages.

Analysis of Exhibit 3- Flights Into Adak

Date of Earliest Flight 10/2/1995
 Date of Latest Flight Shown 9/19/1997

	Flights In	Freight Capacity (MT Total)	Cargo Field information		
			Flights in showing Amt Carried	Flights showing zero freight carried	Cargo Field is Blank
B737	197	10,047.0	187	5	5
C009A	2	-	0	0	2
C021A	4	-	0	1	3
C130H	108	6,561.0	65	19	24
C141B	23	2,515.1	18	4	1
DC008	1	-	1	0	0
HC130N	1	-	0	0	1
C-130 E	1	-	0	0	1
	337	> 19123.1	271	29	37

	Flights for which Cargo Weight is Shown		Capacity of Flts for which No Cargo Wt Shown: (MT)	
	Freight Capacity- MT	Freight Carried- MT (Disclosed)	Field shows "zero" value	Field is Blank
B737	9,537.0	3,139.1	255.0	255.0
C009A	-	-	-	Unkn
C021A	-	-	Unkn	Unkn
C130H	3,948.8	1,512.7	1,154.3	1,458.0
C141B	1,968.3	335.5	437.4	109.4
DC008	Unkn	8.6	-	-
HC130N	Unkn	-	-	Unkn
C-130 E	Unkn	-	-	Unkn
	> 15454.1	4,995.9	> 1846.7	> 1822.4

Note MT of Freight Carried are estimated based upon a value of 441.08 lb per MT. This estimate is based on the FOIA data disclosed in Document 1 (discussed earlier).

61

Analysis of Exhibit 3- Flights Out Of Adak

Date of Earliest Flight 10/2/1995
Date of Latest Flight Shown 9/19/1997

	Flights Out	Freight Capacity (MT Total)	Flights out showing Amt Carried	Flights showing zero freight carried	Cargo Field is Blank
B737	197	10,047.0	152	24	21
C009A	2	-	0	0	2
C021A	4	-	0	0	4
C130H	108	6,561.0	27	17	64
C141B	23	2,515.1	11	3	9
DC008	1	-	0	1	0
HC130N	1	-	0	0	1
C-130 E	1	-	0	0	1
	337	> 19123.1	190	45	102

	Flights for which Cargo Weight is Shown:		Capacity of Flts for which No Cargo Wt Shown:	
	Freight Capacity	Freight Carried (Disclosed)	Field shows "zero" value	Field is Blank
B737	7,752.0	5,385.2	1,224.0	1,071.0
C009A	-	-	-	Unkn
C021A	-	-	-	Unkn
C130H	1,640.3	585.4	1,032.8	3,888.0
C141B	1,202.9	665.7	328.1	984.2
DC008	-	-	Unkn	-
HC130N	-	-	-	Unkn
C-130 E	-	-	-	Unkn
	> 10595.1	6,636.3	2,584.8	> 5943.2

Note MT of Freight Carried are estimated based upon a value of 441.08 lb per MT. This estimate is based on the FOIA data disclosed in Document 1 (discussed earlier) .

Of the 337 flight records disclosed in the Exhibit 3 data, approximately 80% contain data to support an estimate of cargo carried into Adak. Approximately 56% of the records contain similar data for cargo outbound from Adak. Exhibit 3 indicates that during the contract at least 4995.9 MT of Cargo arrived at Adak by Air and 6636.3 MT of cargo left by Air, for a total of 11,632.2 MT. It is probable that these computed values are much lower than the actual air cargo volumes, because:

- There is no entry in the “cargo” field for 139 flights, and an entry of 0 (the meaning of which is indeterminate) for another 74.
- The number of flights in the Exhibit 3 data is fewer than the number of flights in the Exhibit 2 data.

III. Summary and conclusions

The available information concerning air cargo capacity and the volume of cargo transported to and from Adak therefore do not support Dr. Nadel’s claim that my conclusions concerning Samson’s damages imply an unreasonable volume of cargo diverted to air transport.

Although there are significant problems with the data supplied by the Government, which render them unsuitable for a “direct” computation of damages, I have concluded, based on the foregoing analysis, that:

- Sufficient air cargo capacity was in fact available to have carried considerably more cargo than Dr. Nadel suggests is necessary to support my estimate of Samson’s loss.
- A large volume of cargo was in fact shipped by air.
- Much of that cargo was apparently of a type suitable for transportation by barge.

Sincerely,

BRUEGGEMAN AND JOHNSON YEANOPLOS, P.C.

A handwritten signature in black ink, appearing to read "George L. Johnson". The signature is fluid and cursive, with the first name "George" being more prominent.

George L. Johnson, CPA, CFA
President